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6 **UNITED STATES DISTRICT COURT FOR THE**
7 **NORTHERN DISTRICT OF CALIFORNIA**

8 Case No. 5:20-cv-00354-VKD

9 PETER STROJNIK,

10 Plaintiff,

vs.

11 R.F. WEICHERT V, INC. dba JABBERWOCK
12 INN,

13 Defendant.

14 } **MEMORANDUM OF POINTS AND
15 AUTHORITIES IN SUPPORT OF
16 MOTION TO REQUIRE PLAINTIFF
17 TO POST A COSTS BOND**

18 Date: March 30, 2021

19 Time: 10 a.m.

20 Courtroom: 2, 5th Fl.

21 Hon. Virginia K. DeMarchi

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INTRODUCTION

2 Defendant R.F. WEICHERT V, INC. requests that this Court require that plaintiff
3 Peter Strojnik post a bond sufficient to cover Defendant's anticipated costs and reasonable
4 attorney's fees likely to be incurred in the defense of this action, pursuant to *Simulnet E.*
5 *Assocs. v. Ramada Hotel Operating Co.*, 37 F.3d 573, 574 (9th Cir. 1994) and California
6 Code Civ. P. § 1030. As of this filing, three courts have required Strojnik to post a bond
7 after growing weary of his chicanery, including *Strojnik v. Woodside Hotel Grp.*, No.
8 20-cv-03204-BLF, 2021 U.S. Dist. LEXIS 24880 (N.D. Cal. Feb. 9, 2021) (imposing a
9 \$20,000 bond), *Strojnik v. Driftwood Hosp. Mgmt. LLC*, 2021 WL 50456, at *11 (D. Ariz.
10 Jan. 6, 2021) (finding Strojnik to be a vexatious litigant, imposing a \$10,000 on any ADA
11 claim filed in federal court or removed from state court), and citing *Strojnik v. Sashi Goup,*
12 *LLC*, Santa Clara Superior Court Case No. 20CV367614 (finding Strojnik a state court
13 vexatious litigant and imposing a \$50,000 bond). In addition to the foregoing, Strojnik has
14 a string of unsatisfied sanctions awards and judgments, including a \$21,995 judgment that
15 is a lien on this very case. See judgments and liens attached to the Stillman Decl. As
16 Exhibit 5.

Moreover, despite this Court’s (and others) admonishment regarding compliance with Fed.R.Civ.P. 11, Strojnik has now, for the first time in his checkered history of litigation in this state, claimed in his Second Amended Complaint that he actually has and uses a wheelchair – a plainly false allegation, as found by Judge Bashant in her order granting a motion for attorney’s fees against Strojnik.

22 The problem that the courts and others face is that the normal guardrails of litigation,
23 such as Rule 11 admonishments, sanctions, judgments and even disbarment — have had
24 zero effect on Strojnik. If he has already lost his license to practice law due to fraudulent
25 ADA litigation, is willing to fabricate allegations, refuses to pay sanctions, judgments and
26 tax liens and claims to have nothing in his name, the only way that this Court can protect
27 defendants is to require Strojnik to post a bond if he wants to continue to pursue his bad
28 faith claims. As one court put it in imposing a requirement that Strojnik post a \$10,000

1 bond for any complaint filed in the District of Arizona alleging ADA violations:

2 if this Order is to be truly “narrowly-tailored,” it must precisely address the
 3 root of the wrongful behavior: Mr. Strojnik’s financial incentives. It is
 4 reasonable to assume that many of the parties targeted by Mr. Strojnik’s
 5 vexatious tactics would rather pay Mr. Strojnik to go away than deal with a
 6 lawsuit. The parties that choose to bear the costs of defeating Mr. Strojnik’s
 7 frivolous claims in court are too few and far between. And because it is
 8 relatively inexpensive for Mr. Strojnik to file a claim, these brave parties’
 9 efforts ultimately do not deter further frivolous claims. Therefore, the Court
 10 must increase Mr. Strojnik’s cost of filing frivolous ADA cases by requiring
 11 that he post a bond for ADA cases that come before this Court.

12 *Strojnik v. Driftwood Hosp. Mgmt. LLC*, 2021 U.S. Dist. LEXIS 1720, at *31-32 (D. Ariz.
 13 Jan. 6, 2021). Defendant requests that this Court require Strojnik to post a bond in the
 14 amount of \$75,000 as set forth in the Declaration of Philip H. Stillman filed herewith and
 15 stay this case until a ruling on this motion, since Defendant should not have to incur the
 16 additional expenses of yet another Motion to Dismiss until this Court resolves this Motion.

17 STATEMENT OF FACTS

18 Plaintiff Peter Strojnik is a serial ADA plaintiff who has filed over 180 cases against
 19 hotels in California claiming to be disabled. See PACER printout of Strojnik cases,
 20 attached to the Stillman Decl. as Exhibit 1. Appearing pro se, Strojnik alleges that he is a
 21 resident of Maricopa County, Arizona. Complaint, ¶ 3. A former attorney, he was disbarred
 22 in May 2019 by the Arizona State Bar for filing hundreds if not thousands of fraudulent
 23 ADA complaints. *Strojnik v. 1017 Coronado, Inc.*, 2021 U.S. Dist. LEXIS 6824, at *5
 24 (S.D. Cal. Jan. 12, 2021). As one Court held in dismissing a Strojnik ADA case with
 25 prejudice:

26 A search of pacer.gov, sorted by date, reveals that three months after Plaintiff’s
 27 law license was suspended, he began filing ADA access cases as a pro se
 28 litigant instead of filing them on behalf of clients. [citation omitted] Indeed, in
 less than four months, Plaintiff has filed twenty-six ADA actions as a pro se
 litigant. Rather than being a befuddled pro se litigant . . . Plaintiff is an
 experienced litigator who appears to have altered his business model to work
 around the loss of his license.

Strojnik v. Singpoli Grp., LLC, 2019 U.S. Dist. LEXIS 24494, at *3-4 (C.D. Cal. Feb. 14,
 2019), *aff’d*, 2020 U.S. App. LEXIS 11910 (9th Cir. Apr. 15, 2020). Strojnik’s typical
 business model is to file a skeletal complaint that alleges four causes of action: (1) a claim

1 under the ADA, (2) claims under both the Unruh Act and the Disabled Persons Act, and (3)
 2 a claim for negligence per se based on the alleged “intentional” violation of the ADA. *See*
 3 *e.g.*, Strojnik’s Complaint in this case. As one Court held in dismissing his Complaint:

4 Finally, a cursory review of other cases Strojnik has filed in this district reveals
 5 that he has filed essentially identical complaints against other entities that
 6 merely replace the defendant’s name and other minor details. . . Much like the
 7 complaint in this case, those complaints do not allege specific dates or details
 8 regarding the defendants’ alleged ADA violations. Strojnik’s form complaint
 9 and generic opposition brief raise the question of whether his pleadings are
 made in good faith . . . The number of other, essentially identical, complaints
 he has filed in this district raise a concern that Strojnik files bare-bones
 10 complaints that do not meet pleading standards in order to pressure ADA
 11 defendants into settlements before the court can reach the merits of his claims.
 12

13 *Strojnik v. IA Lodging Napa First LLC*, 2020 U.S. Dist. LEXIS 32075, at *13-14 (N.D. Cal.
 14 Feb. 25, 2020). These form complaints have virtually uniformly been held to be insufficient
 15 to plead standing pursuant to the ADA. The *IA Lodging Napa First* court subsequently
 16 dismissed Strojnik’s First Amended Complaint on June 1, 2020, finding that:
 17

18 The record demonstrates that Strojnik has continued to file formulaic
 19 complaints that fail to allege Article III standing, despite being on notice from
 20 multiple courts in every federal district in California that his pleading practices
 21 are inadequate. The concerns raised by the court address exactly the kind of
 22 conduct that pre-filing orders are intended to prevent. See *De Long*, 912 F.2d
 23 at 1148 (“Flagrant abuse of the judicial process cannot be tolerated because it
 24 enables one person to preempt the use of judicial time that properly could be
 25 used to consider the meritorious claims of other litigants.”). Strojnik’s pleading
 26 practices waste the resources of the court and “impose[] unjustified costs on
 27 parties who are forced to defend loosely pleaded complaints that do not allege
 28 specific facts about their misconduct.” See Order to Comply at 2. There are
 also strong indicia that defendants may be pressured into settling “what might
 be meritless claims rather than incur the considerable time and resources
 required to retain counsel and mount a defense.”

29 *Strojnik v. IA Lodging Napa First LLC*, No. 19-cv-03983-DMR, 2020 U.S. Dist. LEXIS
 30 95738, at *35-36 (N.D. Cal. June 1, 2020).

31 Additionally, Strojnik was declared a vexatious litigant and made subject to a pre-
 32 filing order in both the Central and Northern Districts. *Strojnik v. SCG American*
 33 *Construction, Inc.*, 2020 U.S. Dist. LEXIS 133127, at *3 (C.D.Cal. April 19, 2020);
 34 *Strojnik v. IA Lodging Napa First LLC*, 2020 U.S. Dist. LEXIS 95738, at *36 (N.D. Cal.
 35 June 1, 2020)(“the court finds that Strojnik’s litigation tactics are frivolous and harassing.
 36 Accordingly, Andaz Napa’s motion to declare Strojnik a vexatious litigant is granted and

1 the court will enter a pre-filing order to screen Strojnik's disability access complaints.”). In
 2 addition, Strojnik has been declared a vexatious litigant in the State of California and
 3 subject to a state-wide pre-filing order in *Strojnik v. Ayres-Paso Robles, L.P. et al.*, San
 4 Luis Obispo Superior Court Case No. 20CVP0189 (Cal. Super. Ct. February 2, 2021)
 5 (imposing a state-wide pre-filing order), *Strojnik v. Sashi Group, LLC*, Santa Clara Superior
 6 Court Case No. 20CV367614 (Cal. Super. Ct. Dec. 16, 2020) imposing a \$50,000 bond
 7 requirement on Strojnik), and in the District of Arizona. *Strojnik v. Driftwood Hosp. Mgmt.*
 8 *LLC*, 2021 U.S. Dist. LEXIS 1720, at *32 (D. Ariz. Jan. 6, 2021)(declaring Strojnik a
 9 vexatious litigant and imposing a \$10,000 bond requirement on any ADA case filed in the
 10 District). More than sixteen district courts have dismissed his complaints *without* leave to
 11 amend, three of which were recently affirmed by the Ninth Circuit.¹

12

13 ¹ The following courts have dismissed Strojnik’s complaints with prejudice
 14 containing the identical language as in Strojnik’s Complaint: *Strojnik v. Orangewood, LLC*,
 15 2020 U.S. Dist. LEXIS 11743(C.D.Cal. January 22, 2020), *Strojnik v. Pasadena Robles*
 16 *Acquisition, LLC*, 2019 U.S. Dist. LEXIS 213070 (C.D.Cal. August 14, 2019), *aff’d*, 801 F.
 17 App’x 569, 570 (9th Cir. Apr. 15, 2020), *Strojnik v. Kapalua Land Co.*, 2019 U.S. Dist.
 18 LEXIS 165525 (D. Haw. Aug. 26, 2019), *aff’d* 801 F. App’x 531 (9th Cir. Apr. 15, 2020);
 19 *Strojnik v. Landry’s Inc.*, 2019 U.S. Dist. LEXIS 223873 (S.D. Tex. Dec. 9, 2019); *Strojnik*
 20 *v. Four Sisters Inns, Inc.*, 2019 U.S. Dist. LEXIS 212094 (C.D.Cal. December 9, 2019),
 21 *aff’d*, 2020 U.S. App. LEXIS 20146 (9th Cir. June 26, 2020); *Strojnik v. President Hotel*
 22 *Investment, LLC*, Case No. 8:20-cv-00258-DOC (ADSx) (C.D.Cal. May 28, 2020); *Strojnik*
 23 *v. Shandilya, Inc.*, Case No. 20-cv-00254-DOC (ADSx) (C.D.Cal. May 28, 2020); *Strojnik*
 24 *v. Lee Family Trust*, Case No. 20-0257-DOC (ADSx) (C.D.Cal. May 28, 2020); *Strojnik v.*
 25 *SWK Properties*, Case No. 20-00255-DOC (ADSx) (C.D.Cal. May 28, 2020); *Strojnik v.*
 26 *Shakti Investments, LLC*, Case No. 20-0256-DOC (ADSx) (C.D.Cal. May 28, 2020);
 27 *Strojnik v. Host Hotels & Resorts*, 2020 U.S. Dist. LEXIS 92386 (D. Haw. May 26,
 28 2020)(“the court finds Plaintiff has acted in bad faith and granting leave to amend would be
 futile because Plaintiff has been placed on notice by multiple courts of these deficiencies,
 and yet, he has failed to cure them” dismissing Second Amended Complaint); *Strojnik v.*
Victus Grp., Inc., 2020 U.S. Dist. LEXIS 54117 (E.D. Cal. Mar. 27, 2020); *Strojnik v. IA*
Lodging Napa First LLC, No. 19-cv-03983-DMR, 2020 U.S. Dist. LEXIS 95738 (N.D. Cal.
 June 1, 2020)(declaring Strojnik a vexatious litigant in the Northern District and dismissing
 First Amended Complaint); *Strojnik v. Hotel Circle GL Holdings, LLC*, 2020 U.S. Dist.
 LEXIS 133778 (E.D. Cal. July 28, 2020); *Strojnik v. Inn at Jack London Square, LLC*, Case

1 Moreover, despite Strojnik's routine allegations in his complaints that he has severe
 2 right-sided neural foraminal stenosis with symptoms of femoral neuropathy, prostate
 3 cancer, and renal cancer, and a "degenerative right knee," that his physical impairments
 4 substantially limit his major life activities, that he walks with difficulty and pain and that as
 5 a result of his physical impairments, and that "By virtue of his disability, Plaintiff requires
 6 an ADA compliant lodging facility particularly applicable to his mobility, both ambulatory
 7 and wheelchair assisted," Compl., ¶14, a recent March 9, 2020 Rule 35 physical
 8 examination by an orthopedist shows that he has *no* substantial impairments, either in
 9 walking, twisting and grabbing objects, or shoulder range of motion and does *not* appear
 10 impaired. A copy of the Rule 35 report is attached to the Stillman Decl., as Exhibit 2.

11 In addition to the repudiation of Strojnik's claims by Dr. Greenfield, Defendant has
 12

13 No. 20-cv-01289-SBA (TSH)(N.D.Cal. December 3, 2020); *Strojnik v. Wickstrom Hosp.,*
 14 *LLC*, 2020 U.S. Dist. LEXIS 238884 (E.D. Cal. Dec. 17, 2020); *Strojnik v. Bakersfield*
 15 *Convention Hotel*, 2021 U.S. Dist. LEXIS 15653 (E.D. Cal. Jan. 27, 2021); *Strojnik v.*
 16 *Driftwood Hosp. Mgmt. LLC*, 2021 U.S. Dist. LEXIS 1720, at *32 (D. Ariz. Jan. 6, 2021).

17 In addition to the Strojnik cases that were dismissed with prejudice, the following
 18 courts have dismissed Strojnik's complaints with leave to amend: *Strojnik v. 1315 Orange*
 19 *LLC*, 2019 U.S. Dist. LEXIS 185481 (S.D. Cal. Oct. 25, 2019) ("series of grainy, murky
 20 photographs titled "Personal Barrier Encounters," with brief captions . . . does not identify
 21 any barriers that would affect Strojnik, deny him equal access, or deter him from staying at
 22 the hotel," *sua sponte* dismissing complaint), *Strojnik v. Hotel Circle GL Holdings, LLC*,
 23 2019 U.S. Dist. LEXIS 20259 (E.D.Cal. November 21, 2019), *Strojnik v. Resort at Indian*
 24 *Springs, Inc.*, 2019 U.S. Dist. LEXIS 218559 (N.D. Cal. Dec. 19, 2019); *Strojnik v.*
 25 *Bakersfield Convention Hotel I, LLC*, 2020 U.S. Dist. LEXIS 16339 (E.D.Cal. January 31,
 26 2020); *Strojnik v. San Diego Farah Partners, L.P.*, 2020 U.S. Dist. LEXIS 36536, at *2
 27 (S.D. Cal. Mar. 2, 2020) ("Strojnik, a litigant who has filed roughly 20 ADA suits in this
 28 district over the past year, is well aware that a 'list of alleged [statutory] violations cannot
 substitute for the factual allegations required . . . to satisfy Article III's requirement of an
 injury-in-fact.'"), *Strojnik v. Wickstrom Hosp., LLC*, 2020 U.S. Dist. LEXIS 52889 (E.D.
 Cal. Mar. 25, 2020) *Strojnik v. The Victus Group*, 2020 U.S. Dist. LEXIS 54117 (E.D. Cal.
 Mar. 27, 2020)(denying unopposed entry of default judgment and dismissing case); *Strojnik*
v. SCG American Construction, Inc., 8:19-cv-01560-JVS-JDE (C.D.Cal. April 19,
 2020)(declaring Strojnik a vexatious litigant).

1 obtained surveillance video from three hotels that show Strojnik walking with no problems
 2 at all, and in one video, shows him carrying a large “over the shoulder” luggage and pulling
 3 another large suitcase – clearly demonstrating his lack of any type of substantial
 4 impairment. Stillman Decl., ¶ 10. In addition, the mere fact that he is well enough to spend
 5 weeks driving thousands of miles in his car around California suing hotels strongly calls
 6 into question his alleged disabilities, which he alleges include his inability to sit and turn a
 7 steering wheel. *See Strojnik v. Orangewood, LLC*, 8:19-cv-00946-DSF-GJS, Second
 8 Amended Complaint, ¶ 33 (listing travel from January 23, 2019-July 26, 2019); Second
 9 Amended Complaint in this action, ¶ 19. As the *Driftwood* Court held, “There is no serious
 10 doubt that Mr. Strojnik exaggerates his injuries.” *Strojnik v. Driftwood Hosp. Mgmt. LLC*,
 11 2021 U.S. Dist. LEXIS 1720, at *27 (D. Ariz. Jan. 6, 2021).

12 ARGUMENT

13 I.

14 **STROJNIK SHOULD BE REQUIRED TO POST A BOND IN THIS CASE**

15 While the Federal Rules of Civil Procedure do not have a “specific provision . . .
 16 relating to security for costs,” district courts “have inherent power [and discretion] to
 17 require plaintiffs to post security for costs.” *Simulnet E. Assocs. v. Ramada Hotel*
Operating Co., 37 F.3d 573, 574 (9th Cir. 1994). The question of whether to impose a bond
 18 requires district courts to look to the forum state’s law. *Id.* (“Typically federal courts, . . .
 19 follow the forum state’s practice with regard to security for costs”); *see also Pittman*
ex rel. L.P. v. Avish P’ship, 525 F. App’x 591, 593 (9th Cir. 2013)(affirming bond
 20 requirement for serial ADA plaintiff). The California Civil Procedure Code permits courts
 21 to require “an undertaking to secure an award of costs and attorney’s fees” from a plaintiff.
Crytek Gmbh v. Cloud Imperium Games Corp., 2019 U.S. Dist. LEXIS 157184 (C.D. Cal.
 22 July 22, 2019) citing Cal. Civ. Proc. Code § 1030(b). Under that statute, a defendant may
 23 move for such an undertaking when: (1) “plaintiff resides out of the state or is a foreign
 24 corporation” and (2) “there is a reasonable possibility that the moving defendant will obtain
 25 judgment in the action or special proceeding.” *Id.* A defendant does not need to show that
 26

1 there is “no possibility” that the plaintiff could win at trial, “but only that it [is] reasonably
 2 possible” that the defendant will win.” *Crytek GmbH v. Cloud Imperium Games Corp.*,
 3 2019 U.S. Dist. LEXIS 157184 (C.D. Cal. July 22, 2019) at *3, citing *Baltayan v. Estate of*
 4 *Getemyan*, 90 Cal. App. 4th 1427, 1432 (2001). This hurdle is a “relatively low” one. *AF*
 5 *Holdings LLC v. Navasca*, 2013 U.S. Dist. LEXIS 15617 at *1 (N.D. Cal. Feb. 5, 2013).
 6 *Strojnik v. Woodside Hotel Grp.*, No. 20-cv-03204-BLF, 2021 U.S. Dist. LEXIS 24880
 7 (N.D. Cal. Feb. 9, 2021) (imposing a \$20,000 bond). The Ninth Circuit has held that this
 8 standard is met when it would not be “illogical, implausible, or without support in the
 9 record to conclude that there [is] a reasonable possibility that [the defendant] would
 10 prevail” and be entitled to fees and costs. *Pittman*, 525 F. App’x at 593. This issue has
 11 already been decided against Strojnik in *Strojnik v. Woodside Hotel Group, Ltd*, 2021 U.S.
 12 Dist. LEXIS 24880 (N.D. Cal. Feb. 9, 2021), where the court applied the *Simulent* factors
 13 to require that Strojnik post a \$20,000 bond in the identical case as here.

14 Courts should also “balance several factors in assessing the propriety of requiring a
 15 plaintiff to post security for costs, including whether the litigation has ‘the appearance of
 16 vexatiousness’ and:

17 (i) the degree of probability/improbability of success on the merits, and the
 18 background and purpose of the suit; (ii) the reasonable extent of the security to
 19 be posted, if any, viewed from the defendant’s perspective; and (iii) the
 reasonable extent of the security to be posted, if any, viewed from the
 nondomiciliary plaintiff’s perspective.

20 *A. Farber & Partners, Inc. v. Garber*, 417 F. Supp. 2d 1143, 1146 (C.D. Cal. 2006) (citing
 21 *Simulnet*, 37 F.3d at 576). There is no dispute that Plaintiff is an out of state resident and
 22 therefore satisfies the first element of Code Civ. P. § 1030(b). There is similarly no dispute
 23 that Defendant can be entitled to an award of attorney’s fees if it prevails in the case.
 24 *Pittman v. Avish P’ship*, 525 F. App’x 591, 593 (9th Cir. 2013)(affirming imposition of
 25 bond for costs in ADA claim). That leaves the *Simulent* factors examined by the Ninth
 26 Circuit.

27 A. The Appearance of Vexatiousness.

28 This Court need not labor long on the issue of whether Strojnik’s complaints have

1 the appearance of vexatiousness, as Judge Selna has already made such a finding based on
 2 Strojnik's almost identical complaint filed in this case. As Judge Selna recently held,
 3 countless courts have questioned Strojnik's motives in pursuing the litigation
 4 and whether he has a good faith basis for his claims. This is based on the fact
 5 that he files near identical lawsuits, save a few photographs and name changes,
 6 in what is apparently an effort to pressure ADA defendants into settlements
 7 before courts can reach the merits. . . Strojnik should be very well aware of the
 type of conduct that is permissible, yet despite repeated questioning of his
 intentions, he continues to file countless ADA cases in an effort to obtain
 money from his victims . . . ***Strojnik's history contains countless filings of
 frivolous complaints and instances of directly ignoring court orders.***

8 *Strojnik v. SCG American Construction, Inc.*, 8:19-cv-01560-JVS-JDE (C.D.Cal. April 19,
 9 2020) (emphasis added). See also, *Strojnik v. Landry's Inc.*, 2019 U.S. Dist. LEXIS
 10 223873, at *2 n.1 (S.D. Tex. Dec. 9, 2019)(“Given the multiplicity of suits filed by
 11 Strojnik, which may suffer the same lack of standing issue addressed herein, it may be that
 12 Strojnik should be treated as a vexatious litigant.”); *Strojnik v. Woodside Hotel Grp., Ltd.*,
 13 2021 U.S. Dist. LEXIS 24880, at *2 (N.D. Cal. Feb. 9, 2021) (“The Court also finds that
 14 there is a reasonable possibility that Defendant will prevail on the merits and that Strojnik's
 15 Americans with Disabilities Act (“ADA”) claim is frivolous.”); *Advocates for Individuals
 16 with Disabilities LLC v. MidFirst Bank*, 279 F. Supp. 3d 891, 893 (D. Ariz. 2017)
 17 (“Template complaints filled with non-specific allegations have become the stock-in-trade
 18 of attorneys Peter Strojnik This extortionate practice has become pervasive.”); *Strojnik
 19 v. Host Hotels & Resorts*, 2020 U.S. Dist. LEXIS 92386 (D. Haw. May 26, 2020)(“the court
 20 finds Plaintiff has acted in bad faith and granting leave to amend would be futile”). In the
 21 Court's second ruling in *IA Napa Lodging*, holding that Strojnik is a vexatious litigant and
 22 dismissing his First Amended Complaint with prejudice, the Court held that “Strojnik's
 23 litigation tactics are frivolous and harassing.” *Strojnik v. IA Lodging Napa First LLC*, 2020
 24 U.S. Dist. LEXIS 95738, at *36 (N.D. Cal. June 1, 2020); *Strojnik v. Ayres-Paso Robles,
 25 LLC*, San Luis Obispo Case No. 20CVP0189 (“Plaintiff's complaints demonstrate a pattern
 26 that rises to the level of a frivolous litigation tactic”); *Strojnik v. Driftwood Hosp. Mgmt.
 27 LLC*, 2021 U.S. Dist. LEXIS 1720, at *29 (D. Ariz. Jan. 6, 2021)(“The Court finds Mr.
 28 Strojnik's litigation tactics frivolous and harassing.”)

1 Strojnik has also attempted to drive up the costs of litigation by filing an overtly
 2 improper “Strojnik Version I” complaint, refusing to file an amended complaint when
 3 asked to do so by opposing counsel (as counsel did in this case) in several cases, and then
 4 waiting until after the defendant has filed a Motion to Dismiss to file a superseding
 5 amended complaint which then forces the defendant to have to prepare and file yet another
 6 motion to dismiss. Stillman Decl., ¶ 11. This has been Strojnik’s stock in trade since before
 7 he was disbarred. *Advocates for Individuals with Disabilities Found., Inc. v. Golden Rule*
 8 *Props., LLC*, 2017 U.S. Dist. LEXIS 103538, at *5 (D. Ariz. Mar. 20, 2017) (Strojnik’s
 9 tactic “was a bait-and-switch maneuver aimed at ‘prolonging litigation and imposing costs
 10 on the opposing party.’”)

11 B. The Simulent Factors.

12 1. **The Degree of Probability/improbability of Success on the Merits, and the**
Background and Purpose of the Suit.

13 The hurdle to show that a defendant has a possibility of prevailing is low. The Ninth
 14 Circuit has held that district courts do not abuse their discretion by requiring a security
 15 when it would not be “illogical, implausible, or without support in the record to conclude
 16 that there [is] a reasonable possibility that [the defendant] would prevail” and be entitled to
 17 fees and costs. *Crytek Gmbh v. Cloud Imperium Games Corp.*, 2019 U.S. Dist. LEXIS
 18 157184, at *4 (C.D. Cal. July 22, 2019) citing *Pittman*, 525 F. App’x at 593. Given that
 19 defendants have prevailed against Strojnik sixteen times on identical or virtually identical
 20 complaints, two Districts in California, the District of Arizona and the State of California
 21 have declared him a vexatious litigant, it is certainly *not* “illogical, implausible, or without
 22 support in the record” to conclude that Defendant has shown a reasonable possibility of
 23 prevailing in this case.

24 a. ***Numerous Courts Have Already Held That Strojnik’s Complaints Are***
Insufficient.

25 As discussed above, Strojnik is a serial ADA litigant who has filed over 180 cases
 26 against hotels, all of which are based on the same cookie cutter allegations that are found in
 27 the Complaint here. Sixteen courts have already held that Strojnik’s allegations regarding

1 his purported “injury in fact,” intent to return and deterrence are insufficient as a matter of
 2 law and have dismissed those complaints without leave to amend. The Ninth Circuit has
 3 affirmed four such dismissals in *Pasadena Robles, Kapalua Land Co., Four Sisters Inns,*
 4 *LLC and Orangewood, LLC*. Those cases, being final judgments, are now collateral
 5 estoppel on at least the issues of (1) whether Strojnik’s allegation regarding an intent to
 6 return is sufficient and (2) whether Strojnik’s allegation that he is “deterred” from going to
 7 the Defendant’s hotel is sufficient. Thus, based on those cases alone, Defendant has
 8 demonstrated a possibility of success on the merits.

9 However, the Court need not rely on the doctrine of collateral estoppel alone to find
 10 that Defendant has demonstrated at the very least, a reasonable possibility of prevailing.
 11 First, there is the finding of more than *sixteen* other district courts that Strojnik has not
 12 identified how any barriers that he claims to have experienced are barriers to him based on
 13 his own purported disabilities as required by *Chapman v. Pier 1 Imports, Inc.*, 631 F.3d
 14 939, 954 (9th Cir. 2011)(*en banc*).² Although an equal number of those courts have, under
 15 the Ninth Circuit’s liberal policy of amendment, afforded Strojnik another opportunity to
 16 cure that problem, and in those cases, motions to dismiss the amended complaint are still
 17 pending, the surest indicator of Strojnik’s inability or refusal to cure that defect can be
 18 found in *Orangewood*, where the court gave Strojnik three chances to file a satisfactory
 19 complaint and after failing to heed the Court’s orders on what was needed to cure the
 20 defective complaint, dismissed the Second Amended Complaint with prejudice, and
 21 *Wickstrom Hospitality*, where Strojnik was also given two opportunities to amend. Thus, at

23 ² In several of these cases, the district court entered at least two orders dismissing
 24 Strojnik’s complaints with leave to amend, before concluding that the complaint should be
 25 dismissed with prejudice. For example, in *Orangewood*, the court entered two prior orders
 26 before dismissing with prejudice. In *IA Napa Lodging First*, the Court entered two such
 27 orders. In *President Hotel Investments*, and *Shandilya*, the court entered two such orders.
 28 Thus, the actual number of *orders* finding that Strojnik’s complaints are inadequate are
 almost double the eighteen cases where his complaints were finally dismissed with
 prejudice.

1 the very least, it is unlikely that Strojnik can successfully plead standing.

2 b. ***Evidence Shows That Strojnik Is Not Disabled.***

3 In all of the cases granting motions to dismiss, the district courts declined to rely on
 4 matters outside the four corners of the complaint. However, in connection with this
 5 Motion, the Court is not so limited. *Crytek GmbH v. Cloud Imperium Games Corp.*, 2019
 6 U.S. Dist. LEXIS 157184, at *6 (C.D. Cal. July 22, 2019) (relying on declarations to
 7 establish propriety of costs bond). The extra-complaint evidence conclusively establishes
 8 that Strojnik's claims are bogus. The Court need look no further than Judge Bashant's
 9 findings in *Strojnik v. 1017 Coronado, Inc.*, No. 19-cv-02210-BAS-MSB, 2021 U.S. Dist.
 10 LEXIS 6824, at *10 (S.D. Cal. Jan. 12, 2021):

11 Mr. Strojnik appears to suggest that he is wheelchair-bound, a fact that clearly
 12 is not true. In the case most recently before the Court, the Court ordered an
 13 IME to determine whether Mr. Strojnik was truly disabled as he claimed in his
 14 lawsuit. The case settled after the IME was conducted but the examiner
 15 concluded Mr. Strojnik "ambulates relatively well with a very slight limp and
 has an erect posture." (See Ex. 2 to Stillman Decl.) Similarly, at a Court
 hearing on December 10, 2019 (a month after this lawsuit was filed), the Court
 observed Plaintiff able to walk into a courtroom unassisted by a wheelchair. At
 that time Plaintiff did not appear to have difficulty walking.

16 *See also, Strojnik v. Driftwood Hosp. Mgmt. LLC*, 2021 U.S. Dist. LEXIS 1720, at *27 (D.
 17 Ariz. Jan. 6, 2021)(“The Court can only conclude, and so finds, that Mr. Strojnik habitually
 18 over-exaggerates his injuries.”).

19 Second, very little is more persuasive than video showing Strojnik striding around
 20 hotels with no apparent impairment. In a June 5, 2019 surveillance video, Strojnik is seen
 21 striding through the lobby of the Bakersfield Marriott pulling a large suitcase and carrying
 22 another piece of luggage over his shoulder. For the convenience of the court, that video is
 23 posted on YouTube at <https://youtu.be/pnZ2I4yQ3ss>. The timing of this video is important
 24 because Strojnik claims that he had a total knee replacement on June 18, 2019, only thirteen
 25 days after this video shows him “ambulating” without problems at the Bakersfield Marriott
 26 – a hotel he then sued. It is reasonable to infer that Strojnik’s “excruciating” pain,
 27 discomfort and difficulty in walking would have been at its zenith so shortly prior to the
 28 knee replacement surgery, an inference completely debunked by the surveillance tape.

1 Second, there is new surveillance footage of Strojnik “casing” a hotel for ADA
 2 compliance on February 11, 2020. That video also shows him walking briskly in front of
 3 the front desk, where he identifies himself, and then walking without any apparent
 4 difficulty whatsoever in the parking lot as he appears to be taking measurements in order to
 5 sue that hotel and finally, getting into his car. That video is also posted on YouTube for the
 6 Court’s convenience at <https://youtu.be/GRnXOCeh8Pc>.

7 In what is perhaps the best surveillance video to date, another video was taken of
 8 Strojnik casing a Bay Area hotel for ADA compliance on February 10, 2020, which again
 9 shows Strojnik “ambulating” with no problems whatsoever. The video can be seen at
 10 <https://www.youtube.com/watch?v=VebdlEcVh4E>. These videos plainly show that
 11 Strojnik is not disabled, does not need “mobility assistance devices” and regardless of what
 12 he claims is his plethora of medical problems, one thing these videos make clear: Strojnik’s
 13 complaints are fraudulent, vexatious and indeed, sanctionable under 28 U.S.C § 1927 and
 14 this Court’s inherent powers.

15 In addition to the foregoing, ABC News Phoenix did an expose on Strojnik’s filing
 16 of fraudulent ADA lawsuits, which ultimately led to his disbarment. Two videos of
 17 Strojnik walking without any impairment are posted on the ABC Channel 15 website.
 18 <https://www.abc15.com/news/local-news/investigations/state-bar-moves-to-suspend-serial-suing-attorney-exposed-by-abc15> and
 19 <https://www.abc15.com/news/local-news/investigations/az-attorney-general-attempts-second-intervention-to-shut-down-serial-suing-attorney>.

20 Finally, there is the Rule 35 report. In light of those videos, it should come as no
 21 surprise to this Court that a Fed.R.Civ.P. 35 examination by an orthopedist on March 9,
 22 2020 ordered by the court in *Strojnik v. Evans Hotels, LLC*, 3:19-CV-00650-BAS-AGH
 23 (S.D.Cal. 2019) determined that Strojnik has none of the purported physical limitations that
 24 Strojnik complains of in his Second Amended Complaint, ¶ 14. For example, regarding
 25 Strojnik’s claimed difficulty in walking, Dr. Greenfield found that “He appears to be
 26 functioning well post right total knee arthroplasty” and “He ambulates relatively well with a
 27
 28

1 very slight limp and has an erect posture.” Regarding Strojnik’s claimed femoral 2 stenosis, Dr. Greenfield observed that “He has no evidence of positive nerve root tension 3 signs.” Regarding Strojnik’s claimed inability to grasp objects and twist with his hands and 4 shoulders, Dr. Greenfield found that “He has a functional range of motion of his shoulders 5 with flexion, internal rotation, and external rotation” and “He does have an initial adequate 6 grip on both the right- and the left-hand side.” Stillman Decl., Exhibit 2.

7 To put it mildly, Judge Bashant’s findings, the Rule 35 report and the videos 8 demonstrate that Strojnik has no substantial limitations that he could truthfully allege 9 pursuant to Rule 11 are related to the bare procedural violations that he identifies in his 10 complaintS. That is why, despite 22 courts telling him to do so (often more than once), he 11 has refused to explain clearly how he is disabled and how those purported disabilities relate 12 to any alleged barriers. The video evidence coupled with the Rule 35 Report at a minimum 13 establishes that Defendant has shown at least a reasonable possibility of prevailing in this 14 case.

15 **2. The Reasonable Extent of the Security to Be Posted, Viewed from the**
Defendant’s Perspective.

16 As set forth in the Stillman Declaration, Defendant has shown that it will likely cost
17 well over \$75,000 in reasonable attorney’s fees and taxable costs to litigate this case
18 through trial. That amount is specifically itemized in the Stillman Decl., ¶¶ 12-24. As
19 detailed therein, that is much less than the estimate of the attorney’s fees that will likely be
20 expended in defeating Strojnik’s claims, together with \$33,100 in costs.

21 “Courts must be careful not to ‘deprive a plaintiff of access to the federal courts’ by
22 forcing them to post an excessive bond.” *Crytek Gmbh v. Cloud Imperium Games Corp.*,
23 2019 U.S. Dist. LEXIS 157184, at *10-11 (C.D. Cal. July 22, 2019). Although Defendant
24 estimates that attorney’s fees through trial will amount to over \$110,000, this is not an
25 excessive amount for litigating a case – even a vexatious one. Moreover, although Strojnik
26 claims to be retired, he admits to having received \$249,079 from 117 ADA settlements in
27 the last two years. *Strojnik v. IA Lodging Napa First LLC*, 2020 U.S. Dist. LEXIS 95738,

at *18-19 (N.D. Cal. June 1, 2020). In *Driftwood*, the Court ordered Strojnik to provide evidence of the amount of all of his settlements in the Arizona courts in the last year. The Court specifically held that Strojnik misrepresented the amount that he received, holding that “To date, he says he has settled thirteen cases, which would amount to just over \$100,000. Even if the Court accepted Mr. Strojnik’s claimed ‘initial expenses’ beyond fees and service costs as legitimate, he would still be making about \$75,000.” *Strojnik v. Driftwood Hosp. Mgmt. LLC*, 2021 U.S. Dist. LEXIS 1720, at *24 (D. Ariz. Jan. 6, 2021).

Considering that despite those justifiable attorney’s fees, Defendant is only seeking a fraction of those fees as a bond, the amount sought is not excessive. *See Pittman v. Avish P’ship*, 525 F. App’x 591, 594 (9th Cir. 2013)(in ADA case, “it was not an abuse of discretion to set the bond at \$50,000.”).

The need for a bond is especially important in Strojnik’s cases for two reasons. First, Strojnik appears to use multiple nonprofits into which he either deposits his ill-gotten gains or to which he assigns his ill-gotten gains. In *Advocates for Individuals with Disabilities LLC v. MidFirst Bank*, 279 F. Supp. 3d 891, 893 (D. Ariz. 2017), a case where Strojnik was counsel, the court identified four such similar sounding nonprofits:

AID has pursued upwards of 160 cookie-cutter lawsuits in federal court and, from early to later 2016, more than 1,700 such suits in Arizona state court. They come under the heading of different organizations with closely related names: "Advocates for Individuals with Disabilities Foundation," "Advocates for Individuals with Disabilities LLC," and "American Advocates for Disabled Individuals." (Doc. 42-1 at 4.) (Some have also been filed under the name "Advocates for American Disabled Individuals LLC."

Id. See also, Advocates for Individuals with Disabilities LLC v. WSA Props. LLC, 210 F. Supp. 3d 1213 (D. Ariz. 2016). Strojnik also has claimed that he has donated \$1.2 million from his ADA lawsuits to an unnamed nonprofit corporation. *See* Strojnik Response to Order to Show Cause, *Strojnik v. IA Napa Lodging First, LLC*, Case 4:19-cv-03983-DMR (N.D.Cal. March 21, 2020), Dkt. 56, p. 9. Strojnik does not identify the name of the nonprofit to which he claims to have allegedly donated \$1.2 million. Moreover, in his disbarment testimony before the Arizona State Bar, Strojnik claimed that he:

worked for free, under an arrangement with AID, he would demand attorney

1 fees and those attorney fees were paid directly to AID and given to other
 2 individuals unknown to Mr. Strojnik. [158:7-18.] He swore he was never paid
 3 or given anything for attorney fees. Instead he testified, "The attorney fees
 4 were assigned to AID." He then added "I never saw the check."

5 Order of Interim Suspension, p. 9, *In re Peter Strojnik*, Case No. PDJ 2019-9018. A copy of
 6 the Order for Interim Suspension is attached to the Stillman Decl., as Exhibit 4. *See also*,
 7 *MidFirst Bank*, 279 F. Supp. 3d at 897 ("Strojnik also maintains that all of the fees
 8 collected in his cases are donated to charity, though no details are given.").

9 Second, Strojnik has left a trail of unpaid liens, sanctions and judgments in both
 10 Arizona and now in California. *See RJN*, Exhibit 5. The very purpose of imposing a cost
 11 bond on an out of state plaintiff is to make sure that a successful defendant can collect costs
 12 and attorney's fees without difficulty. Here, there are cost awards against Strojnik in
 13 California state courts of approximately \$3,000, as well as two attorney's fee awards of
 14 approximately \$40,000. Strojnik is literally thumbing his nose at the Courts and only with
 15 a costs bond can Defendant be assured of being able to collect on an award.

16 Since it cannot be disputed that (1) Strojnik has been disbarred for filing fraudulent
 17 claims, (2) uses one or more nonprofit corporations to hide the proceeds of his ADA
 18 lawsuits from creditors and (3) claims to have worked for "free" or has claimed huge
 19 undocumented expenses to hide his income, and (4) has left a trail of unpaid judgments and
 20 liens in both Arizona and California, it is highly likely that without a bond, Defendant will
 21 never be able to collect any attorney's fees or costs awarded.

22 **3. The Reasonable Extent of the Security to Be Posted Viewed from the**
 23 **Nondomiciliary Plaintiff's Perspective.**

24 Strojnik no doubt views *any* amount as unreasonable. This factor should carry no
 25 weight at all. However, given his admission that he has received \$249,000 in settlements
 26 since May 2018 (when he was suspended as a lawyer) through the present in California,
 27 approximately \$100,000 in the past year in Arizona and claims to have donated \$1.2
 28 million in settlement proceeds to charity, and according to Zillow.com, lives in a house

1 valued at \$1.6 million,³ Strojnik can clearly afford to post a \$75,000 bond. *See Pittman*,
 2 525 F. App'x at 594.

3 As the *Driftwood* court held, “because it is relatively inexpensive for Mr. Strojnik to
 4 file a claim, these brave parties’ efforts ultimately do not deter further frivolous claims.
 5 Therefore, the Court must increase Mr. Strojnik’s cost of filing frivolous ADA cases by
 6 requiring that he post a bond for ADA cases that come before this Court.” *Strojnik v.*
 7 *Driftwood Hosp. Mgmt. LLC*, 2021 U.S. Dist. LEXIS 1720, at *32 (D. Ariz. Jan. 6, 2021)

8 **CONCLUSION**

9 For the foregoing reasons, Defendant requests that this Court grant its Motion and
 10 require plaintiff Peter Strojnik to post a bond in the amount of \$75,000.

11 Respectfully Submitted,

12 STILLMAN & ASSOCIATES



13 Dated: February 22, 2021 By: _____ Philip H. Stillman, Esq.
 14 _____ Attorneys for defendant R.F. WEICHERT V, INC.
 15

26 _____
 27 ³
 28 https://www.zillow.com/homedetails/7847-N-Central-Ave-Phoenix-AZ-85020/71619720_zpid/

PROOF OF SERVICE

I, the undersigned, certify under penalty of perjury that on February 23, or as soon as possible thereafter, copies of the foregoing Motion for a Costs Bond, Memorandum of Points and Authorities, the Declaration of Philip Stillman, the Request for Judicial Notice, and Proposed Order was served electronically by the Court's ECF notice to all persons/entities requesting special notice or otherwise entitled to the same and via email to Plaintiff's email address listed with this Court.

By: s/ Philip H. Stillman
Attorneys for R.F. WEICHERT V, INC.